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August 21, 2008

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Intercarrier Compensation for ISP-Bound Traffic*, WC Docket No. 99-68; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *IP-Enabled Services*, WC Docket No. 04-36

Dear Ms. Dortch:

By letter dated July 17, 2008, AT&T Inc. filed what it described as "three interrelated documents" in the above-referenced dockets. The Oregon Telecommunications Association ("OTA") is filing this letter in response to the AT&T filing.

Comprehensive Intercarrier Compensation Reform Should Proceed Immediately.

The first of the documents filed by AT&T on July 17, 2008, was a letter from Robert W. Quinn, Senior Vice President Federal Regulatory, urging the Commission to act decisively in unifying terminating intercarrier rates for all carriers. OTA supports both Chairman Martin's commitment to comprehensive intercarrier compensation reform and the AT&T call to action.

OTA has previously filed comments in support of the Missoula Plan with a very few and very modest modifications to Track 2 to make the Missoula Plan more effective for those carriers. Those comments were filed jointly with other

state associations. OTA reiterates its support and joins AT&T in urging the Commission to take action. OTA urges the Commission to approve the Missoula Plan with the minor modifications recommended by OTA. If that cannot be accomplished, OTA urges that the Commission, at the very least, move forward to address phantom traffic and develop a unified intercarrier compensation rate with appropriate transition for rural carriers to universal service support for lost access revenue.

Access Charges Should Apply to Interexchange IP/PSTN Traffic.

The second document filed by AT&T is entitled Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers. OTA agrees with AT&T's basic statement that interstate and intrastate access charges should apply to interexchange IP/PSTN traffic. See, AT&T's Petition beginning at Page 26. However, OTA does not agree with AT&T's position that intrastate interexchange IP/PSTN traffic would be assessed access charges only if the LEC's intrastate terminating access charges are set at or below the level of the interstate terminating access charges. AT&T Petition at p. 27.

As a basic tenet for its position that access rates apply to interexchange IP/PSTN traffic, AT&T cites to the Commission's statement that one of the Commission's "primary objectives with respect to the formulation of [its] access charge rules has been to assess access charges on all users of exchange access, irrespective of their designation as carriers, non-carrier service providers, or private customers."[1] AT&T Petition at p. 28. OTA supports this concept.

The rationale offered by AT&T that interstate access charges should apply to interstate interexchange IP/PSTN traffic is that subsidies have been removed from interstate terminating access charges. As a result, AT&T argues that those rates are economically efficient. AT&T Petition at p. 27. OTA agrees with this characterization and supports the application of interstate access charges to interstate interexchange IP/PSTN traffic.

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[1] *Amendments of Part 69 of the Commission's Rules Relating To the Creation of Access Charge Subelements for Open Network Architecture Policy and Rules Concerning Rates for Dominant Carriers*, Report and Order and Order on Further Reconsideration and Supplemental NPRM, 6 FCC Rcd 4524, ¶ 54 (1991).

OTA does not agree with the concept that lawful, tariffed intrastate access rates should not apply to intrastate, interexchange IP/PSTN traffic. If a state commission has authorized intrastate access rates to be at a particular level, that decision should stand and those access charges should apply until such time as this Commission takes action on comprehensive intercarrier compensation reform. There is no good reason to carve out intrastate, interexchange IP/PSTN traffic from lawful, tariffed intrastate access rates.

There certainly is no logical reason, as AT&T's position would lead to, that if an intrastate access rate is higher than the interstate access rate, then the rural carriers in that state cannot apply any access charges to intrastate, interexchange IP/PSTN traffic.[2] While OTA does not advocate the following, at the very least, if the Commission adopts AT&T's position, that position should be modified so that in those cases where the intrastate access rate is higher than the interstate access rate, the intrastate access rate will be capped at the interstate level and will then apply to intrastate interexchange IP/PSTN traffic.

AT&T Has Not Demonstrated That Preemption of State Regulation of Fixed-Location VoIP Service is Needed or in the Public Interest.

The third document filed by AT&T on July 17, 2008, is a letter regarding VoIP jurisdiction that urged the Commission to formally extend the preemptive effect of the Vonage Order[3] to all interconnected VoIP services, including fixed-location VoIP services. OTA's position is that such action is not necessary and may be contrary to the public interest if taken in full.

The fixed-location VoIP services that carriers such as Comcast and Charter are providing are no different than the local exchange services provided by any other competitive local exchange carrier ("CLEC") in its effect on the customer receiving that service. The only difference is that fixed-location VoIP service is a different mode of transmission, beginning as an IP-based service on the originating end. The goal of fixed-location VoIP service is the same as the goal of TDM-based telecommunications service provided over fiber or copper networks. That is, to allow customers to communicate with residential customers and businesses on a local and interexchange basis. Further,

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[2] See, AT&T's Petition at p. 35.

[3] Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minn. Pub. Utils. Comm'n, Memorandum Opinion and Order, 19 FCC Rcd 22404 (2004) ("Vonage Order"), aff'd, Minnesota Pub. Utils. Comm'n v. FCC, 483 F.3d 570 (8th Cir. 2007).

regardless of how such service originates, some, perhaps most, fixed-location VoIP service uses the Public Switched Telecommunications Network ("PSTN"), for termination of the traffic.

The rationale that is offered by AT&T as the basis for the requested preemption is that VoIP services should not be subject to a myriad of different forms of economic regulation. However, AT&T does not make the case that without preemption, economic regulation would be applied to the fixed-location VoIP services. CLECs in the State of Oregon, for example, are not subject to any real form of economic regulation.[4] They do not even file price lists with the Oregon Commission.

On the other hand, there is very good reason that the public interest would be served by clarifying that all CLECs, including those competing through the use of VoIP services are subject to non-economic regulation, including consumer protection and public safety provisions administered by the state commissions and other state authorities.[5] There is no good reason to preempt state regulation and force customers of Comcast, for example, to be subject to the whim of Comcast's offering for consumer protection purposes.[6]

At the very least, the Commission should clarify that fixed-location VoIP services are subject to the following:

- The provision of E-911 service and contribution to the support of that service on the same basis as other intrastate carriers[7]
- Access to and the support of TRS-based services on the same basis as other intrastate carriers
- Consumer protection provisions of the state commission relating to such things as customer disconnection, customer notifications and

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[4] CLECs do have a requirement to register. However, the entry burden is very low and has the advantage of clearly identifying the classification of the entity for interconnection and other relationships.

[5] For example, consumer protection statutes.

[6] Comcast's recent file-sharing debacle underscores this point.

[7] To the extent that E911 and TRS are addressed by the Commission's actions in In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, E911 Requirements for IP-Enabled Service Providers, CG Docket No. 03-123, WC Docket No. 05-196, Report and Order and Further Notice of Proposed Rulemaking. FCC 08-151 (Released June 24, 2008) and other Commission and court orders, if the Commission takes preemptive action, the Commission should be careful to preserve the applicability of such prior actions.

other rules designed to protect the consumer

Thank you for the consideration of these points related to AT&T's filings of July 17, 2008.

Sincerely,

RICHARD A. FINNIGAN

RAF/km

cc: Chairman Kevin Martin (via e-mail)
Commissioner Michael Copps (via e-mail)
Commissioner Jonathan Adelstein (via e-mail)
Commissioner Deborah Tate (via e-mail)
Commissioner Robert McDowell (via e-mail)
Daniel Gonzalez (via e-mail)
Amy Bender (via e-mail)
Scott Deutchman (via e-mail)
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Greg Orlando (via e-mail)
Nicholas Alexander (via e-mail)